WP(C) 4172/2000
BEFORE
THE HON'BLE MR. JUSTICE AMITAVA ROY
THE HON'BLE MR. JUSTICE P.K. MUSAHARY
JUDGMENT & ORDER
(CAV)

Amitava Roy, J

The petitioners, Government owned Public Sector entities, seek defeasance of Sections 3-A and 25-B introduced by the Assam Land Revenue Reassessment (Amendment) Act, 1997 (for short, hereinafter referred to as 'the Act 1997/ 1997 Act) as ultra vires the Constitution besides being infirm for lack of legislative competence. Reclassification of lands at their disposal in furtherance of their institutional pursuits and consequential enhancement in land revenue therefor has also been oppugned. The impugnments being common and the factual settings substantially identical with minor inconsequential divergences, this analogous adjudication is permissible. However, the imperative facts to sketch the backdrop as are unavoidable have been gleaned from the pleadings of WP(C) 6853/2005 and WP(C) 4172/2002.

2. We have heard Mr GN Sahewalla, Senior Advocate for the petitioner Oil & Natural Gas Corporation Ltd. (for short, ONGC/ Corporation) and Mr AM Buzar Baruah, Advocate for the petitioner Oil India Limited (for short, 'OIL/ Company'). The respondents have been represented by Dr. B.P. Todi, Senior Advocate assisted by Mr. N Rajkhowa, Advocate.

3. The Corporation in which in terms of Section 3 of the ONGC (Transfer of Undertaking & Repeal) Act, 1993 the assets of the erstwhile Oil and Natural Gas Commission did vest with effect from 1.2.1994, has introduced itself to be an organization engaged in exploration and production of hydrocarbons popularly known as Crude Oil and Natural Gas, its exploits being spread over the country as a whole and also beyond its territorial shores. According to it, the Crude Oil produced/ extracted from Assam is sold to various refineries situated in the state for refining. However, the natural gas extracted is supplied to the Gas Authority of India Limited and other Public Sector organizations including the Assam State Electricity Board. It has averred that in connection with the related operations for the purpose of exploring and exploiting hydrocarbons, the lands required are being acquired under the provisions of the Land Acquisition Act, 1894 by paying due compensation thereunder and at times, land is also taken on long term lease. According to it, out of such stretches often only a small percentage thereof is actually used for the exploration and exploitation activities and the rest are utilized for providing roads, construction of office buildings, residential quarters and other civic amenities to its officers and staff. Some portions are also used for setting up schools, hospitals, parks and sports complex for being availed by the members of the public.

4. The Corporation has referred to a series of miscellaneous reclassification cases in connection with which notices had been issued by the Additional Deputy Commissioner, Sibsagar against which it had submitted written objections. The appeals filed against the orders rejecting its representations before the learned Assam Board of Revenue, Guwahati were also dismissed. In essence, vide orders passed in the reclassification cases the State authorities demanded payment of land revenue at the enhanced rate. That being aggrieved by such decisions which stood affirmed by the learned Assam Board of Revenue, Guwahati it had approached this Court, amongst others, with Civil Rule No. 2769/98, 3750/98 and WP(C) 165/2000 pertaining to various periods of demand has been mentioned. Tracing these demands for enhanced land revenue to the Assam Land Revenue Assessment Act, 1936 (for short, 'Act 1936/ 1936 Act') as well as Act 1997 (amending the 1936 Act), it has repudiated the same to be illegal and unauthorized in law.

5. Vis- -vis Section 2(xv) of the Act 1936 defining 'industrial land', it has asserted that its activities do not tantamount to manufacture of any industrial product and, thus, the land at its disposal is not an industrial land. It has, thus, pleaded that payment of enhanced land revenue with reference to Sections 3-A and 25-B of the Act 1997 is wholly without jurisdiction. Reference has been made to the Oil Fields (Regulation & Development) Act, 1948 (for short, 'the 1948 Act/ Act 1948') and the Petroleum & Natural Gas Rules, 1959 framed thereunder (for short, hereinafter referred to as 'the 1959 Rules/Rules 1959') which cover the entire field of Crude Oil and Natural Gas providing inter alia for grant of mining lease etc. in connection therewith and statutory payments like royalty, licence fee, dead rent, surface rent et al. That under such a mining lease as stipulated, no land revenue is payable has been emphasized. The petitioner has also alluded to the Oil Industry (Development) Act, 1974 (for short, 1974 Act) for development of oil industry. In this legislative setting, according to the petitioner, the State Government lacks in competence to enact any law in respect of Crude Oil and Natural Gas for the purpose of realizing any land revenue with regard thereto.

6. The petitioner has averred that in fact in order to facilitate the exploration and extraction of mineral oil it has been granted a mining lease and licence thereunder in respect of lands therefor at its disposal. It has pleaded that though the entire area covered by the mining lease does not produce Crude Oil and Natural Gas, under the 1959 Rules it is to pay dead rent therefor as well as royalty for the plots wherefrom such products are extracted. In addition thereto, surface rent is also payable. Further, surface compensation to the occupiers of the land at the time of entering the same pursuant to the petroleum exploration licence/ mining lease under Rule 189/ 190 of the Rules framed under the Assam Land Revenue Regulation (for short, hereinafter referred to as 'the Regulation') is also to be paid. Apart from citing these factors against the legality of the demand for land revenue for the same plot(s), reliance has also been placed on Section 28 of the Regulation in endorsement of its assertion of exemption from such impost.

7. The petitioner OIL has treaded substantially on his beaten track. While contending that it is engaged in the business of exploration, extraction and transportation of mineral oil/ crude oil at different cites in the country including the State of Assam and that such pursuits are regulated by the 1948 Act, the Petroleum Act, 1934 (for short, hereinafter referred to as 'the Act 1934/ 1934 Act') as well as the Rules framed thereunder including the 1959 Rules, it similarly has denounced the demand of land revenue in connection with the land at its disposal to cater to its aforementioned activities. According to it, it has been granted, under the 1959 Rules, petroleum mining lease in respect of lands in certain locations in connection with which it is to pay annual dead rent and surface rent in addition to royalty for every metric ton of petroleum extracted at a rate to be fixed by the Central Government from time to time. That under the mining lease it is liable to pay taxes, assessments and impositions in the nature of public demands except land revenue has been emphasized too. Besides impeaching Section 3-A and 25-B of the Act 1997 on various counts, it has highlighted as well that it is not engaged in the manufacture of any industrial product and, therefore, the lands at its disposal can by no means be construed to be industrial lands as defined under Section 2(v) of the Act 1936 for imposition of enhanced land revenue under Section 25-B. Endeavours of the State authorities pursuant to the impugned provisions of the Act 1997 to realize enhanced land revenue and the objections laid by it repudiating such law have also been referred to indicate exhaustion of steps by them for redress before turning to this Court.

8. As alluded to hereinabove, the pleaded facts in the other writ petitions more particularly relate to the aspect of reclassification of lands at the disposal of these two organizations as industrial sites and the consequentia

l demand for land revenue at the enhanced rate under the Act 1997 and, thus dila tion thereof is inessential. Additional pleadings have been brought on record by the petitioners to emphasise in particular the quantum of payment being made by them as royalty and otherwise under the mining leases in their bid to negate th e justifiability for further realization by way of land revenue and, that too, a t the enhanced rate.

9. The respondents in their affidavit while endorsing the validity of the impugned provisions and the demand for enhanced land revenue based thereo n, have insisted that the Crude Oil and the Natural Gas explored and extracted f rom the field area are the raw materials for producing and manufacturing industr ial products and, therefore, the land at the disposal of the petitioners are vis ibly industrial land within the definition of Section 2(xv) of the Act 1936 (che ck). According to the respondents, collection and assessment of land revenue is within the purview and competence of the State Legislature, the Entry relatable thereto being included in List II of Schedule 7 to the Constitution of India. Th ey have contended that as oil and natural gas have acquired global importance in the industrialization of modern economies, the land utilized for oil exploratio n has been rightly construed to be an industrial site for which no separate noti fication under Section 3A is called for. They have asserted that the petitioners ' perception of exemption from land revenue on the plea of payment of other levi es for the same land under the mining leases is fallacious and untenable. That t heir challenge to the demand for land revenue is also frivolous in the face of t heir voluntary payment thereof till enhancement has been underlined. While admit ting that the demand for the enhanced land revenue is as per Section 25-B of the 1997 Act classifying the land at the disposal of the petitioner to be industria l sites, the respondents have asserted the validity thereof.

10. Vis-a-vis OIL, the respondents have asserted in particular that it under the mining lease pays either the dead rent or royalty and not both at t he same time. That this organization is involved in marketing of its finished pr oducts like LPG from its locations in addition to exploration, extraction and tr ansportation of crude oil has also been pleaded. That royalty, licence fee, leas e fee etc. do not come under the ambit of land revenue under the Regulation and that the State Government had never exempted the petitioners therefrom has been stated as well. The respondents have averred that all lands are eventually under the State Government and the occupant is liable to pay land revenue to it under the Regulation.

11. The reply affidavits of the petitioners are essentially those of affirmation and reiteration of their averments in the writ petitions as well as denials of the factual assertions of the State respondents incompatible with th eir orientations.

12. In the above contentious backdrop, Mr Sahewalla has emphatically contended that Section 25-B of the 1997 Act is beyond legislative competence an d is, thus, unconstitutional, null and void. As the levy contemplated therein is on net profit, it is essentially a tax imposed on the mineral oil, a field excl usively within the legislative domain of the Parliament outlined by Entry-53 of List-I of Schedule 7 to the Constitution of India. As the impost in the alternat ive is also construable to be a tax on income as contemplated in Entry -82 of th e said List-I, the State Legislature obviously does not posses the competence of enacting any law thereon, thus, rendering Section 25-B non-est, he contended. W ithout prejudice to these impeachments, the learned senior counsel has argued th at Sections 3-A and 25-B of the 1997 Act are highly arbitrary, discriminatory an d unreasonable as thereby the entire land at the disposal of the petitioners is sought to be proclaimed as industrial land though a substantial portion thereof is utilized as road, office building, quarters etc. Further, in absence of any d eclaration under Section 3A that the land of the petitioners is an industrial si te, no levy contemplated under Section 25-B is permissible and, thus, the demand

is wholly illegal and unauthorized, he urged. As the levy under Section 25-B is sans any unit of land measure but on profit without any reference to the area actually utilized by the petitioners for their operations, it is wholly arbitrary, illogical and irrational as well, he added. Mr Sahewalla pleaded that as the activities of the petitioners, namely, extraction, exploration and transportation of the mineral oil/ crude oil do not amount to manufacture of any industrial product, the land used by them therefor are by no means industrial land as defined under Section 2(xv) of the Act 1936, as amended, and thus the levy of land revenue is wholly incompetent.

13. Mr Sahewalla urged that as the petitioners' activities are under a mining lease in terms of the 1948 Act and the 1959 Rules and they in compliance of the stipulations thereof are paying royalty, surface rent and dead rent in respect of the extraction, Section 25-B is inapplicable in their case and, thus, the resultant demands are without jurisdiction. The learned senior counsel argued that the Government of Assam being a party to the mining lease which is a statutory agreement under the 1959 Rules, it is bound by the covenants thereof which inter alia mandate against any demand for payment of land revenue and, thus, on that count as well the impugned demand is palpably illegal, null and void. Referring in particular to Rule 13(2)(b) of the 1959 Rules, the learned senior counsel insisted that as the surface rent referred to therein is synonymous with land revenue, the levy under Section 25-B is incompetent. Referring to Section 28 of the Regulation, Mr Sahewalla has pleaded that in terms thereof as well, no land revenue is realizable from the petitioners who are administrating their operations on the land at their disposal under the respective mining leases which subsist as on date. That by means of royalty the petitioners are paying huge amounts annually to the State Government has been sought to be underlined by drawing the attention of this Court to the relevant averments in the pleadings. Mr Sahewalla in support of his contentions has placed reliance on the following decisions:
i) Oil India Ltd.& Ors. -vs- State of Assam & Ors., 2006 (1) GLR 593
ii) Deepak Kumar Poddar -vs- State of Assam & Ors., 2010 (6) GLR 835
and the decision of the Gujarat High Court in First Appeal Nos. 5224 of 2001, 5225 of 2001 with Civil Application Nos. 12963 of 2001 and 12964 of 2001 (D/D 1.12.2005) (Oil & Natural Gas Corporation Ltd. -vs- Taluka Panchayat, Khambat & Anr.)

14. While adopting generally the above contentions, Mr Buzar Baruah has argued that a plain reading of Section 25-B would disclose that the levy contemplated thereunder is in fact not a tax on land as no unit thereof has been specified to measure the same. According to the learned counsel, the impost envisaged therein is in essence a taxation on the profit from petroleum and petroleum products which is obviously beyond the competence of the State Legislature, a field being constitutionally reserved for the Parliament in Entry-53 of List-I of Schedule 7 to the Constitution of India. While reiterating that the purported land revenue sought to be realized under Section 25-B is in disguise a tax on income as envisioned in Entry-82 of List-I of Schedule 7 to the Constitution of India, a domain reserved for the Parliament, he contended that the only refuge of the State respondents to save the provision is Entry-49 of List-II of Schedule 7 to the Constitution of India. Mr Buzarbaruah, however, pleaded that such an endevour to be valid and legally cognizable, the levy under Section 25-B has to be essentially based on unit of land measure. As the phraseology applied in Section 25B does not permit such an interpretation, it is apparently ultra vires the Constitution, he maintained. According to Mr Buzarbaruah, as Section 25-B contemplates tax on the income derived from the activities related to petroleum and petroleum productions and not one on land, it is stillborn in law and is liable to be adjudged as such. The learned counsel echoed the plea of Mr Sahewalla to the effect that the activities of the petitioners do not amount to manufacture and, thus, Section 2(xv) of the Act 1936, as amended, is wholly inapplicable to them and that consequently the demand for land revenue is non-est in law. He reiterated

as well that in the teeth of the stipulations contained in the mining lease which is statutory in nature, Section 25-B cannot equip the State respondents to realize land revenue as endeavoured. According to the learned counsel, the second proviso to Section 28 of the Regulation is also of no avail as the same does not efface the sanction of exemption from land revenue qua the petitioners in view of the subsisting mining leases under the 1959 Rules involving the land at their disposal. In any case as the land of the petitioners stretch over several parts of the State, demand of land revenue raised district wise irrespective of the actual utilization thereof is illogical, arbitrary, unreasonable and unfair on that count as well, and thus, the same is liable to be adjudged illegal and discriminatory. The following decisions were relied upon by Mr Buzarbaruah in support of his contentions:

i) Ajoy Kumar Mukherjee -vs- Local Board of Barpeta, AIR 1965 SC 1561
ii) Union of India & Ors. -vs- J.G. Glass Industries Ltd. & Ors. (1998) 2 SCC 32
iii) State of W.B. -vs- Kesoram Industrial Ltd. & Ors. (2004) 10 SCC 201

15. Dr. Todi in reply has insisted that the impost predicated by Section 25-B is directly relatable to Entry-45 of List-II of Schedule 7 to the Constitution of India and, thus, the plea of want of legislative competence of the State Legislature is wholly misconceived. According to the learned senior counsel, the activities in which the petitioners are engaged amount to manufacture and, thus, the land at their disposal is industrial land as contemplated in Section 20-A of the Act 1936, as amended by the Act 1990. The learned senior counsel referred to downloads from the websites of the petitioners to authenticate the submission vis- -vis the nature of the activities engaged in by the petitioners. Dr. Todi argued that for quantifying the levy under section 25-B, the land of the petitioners as a composite whole is construed to be proportionate to the profit earned by them and, thus, no separate unit of land measure is essential for computation of the land revenue. The learned senior counsel pleaded that the profit conceptualized to be the unit of the levy is only a measure of revenue to be realized and that the same per se does not nix Section 25-B to be a provision within the ambit of Entry-45 of List-II of Schedule 7 to the Constitution of India. As the validity of Section 20A inserted by the 1990 Amendment of the Act 1936 has not been challenged and the petitioners have been paying land revenue before enhancement, they are estopped from impugning the validity of Section 25-B or questioning their liability to pay the same at the enhanced rate in terms thereof, he urged. Dr. Todi maintained that in the face of Section 25-A and the manufacturing process pursued by the petitioners, the necessity of a fresh declaration under Section 3-A of the Act 1997 is uncalled for. Referring to the provisions of the Act 1948, the 1959 Rules as well as the stipulations in the mining leas of the petitioners, the learned senior counsel has urged that royalty, surface rent and dead rent are independent of the land revenue realizable for the land at their disposal. He relied on the second proviso to Section 28 of the Regulation to assert the validity of the impugned demands. Dr. Todi fairly submitted that the imposition of land revenue at the enhanced rate with retrospective effect may not, however, be tenable but is realizable from 25.5.97, the date from which the Act 1997 had been enforced. To buttress his arguments, Dr. Todi placed reliance on the following decisions of the Apex Court:
i) State of Mysore & Ors. -vs- M.L. Nagade and Gadag & Ors., AIR 1983 SC 762
ii) Union of India & Ors. -vs- J.G. Glass Industries Ltd. & Ors. (1998) 2 SCC 32

16. Mr Buzarbaruah in reply dismissed the reliability of the website downloads as unimpeachable testimony of the nature of the activities undertaken by the petitioners to arrive at a conclusion that those amount to manufacture of industrial products. He sought to plead that whereas the notion of manufacture encompasses the concept of production, the reverse is not true. As in any view

of the matter, the website downloads indicate that the petitioners are engaged in a process of production, the same by no means amount to manufacture. According to Mr. Buzarbaruah, the interpretation sought to be provided to the second proviso to Section 28 is impermissible in view of the fundamental precept of statutory interpretation that a proviso only carves out an exception to the parent provision but does not supplant the same. The following decisions in addition were relied upon by him:

i) Hindusta Ideal Insurance Co. Ltd. -vs- Life Insurance Corporation of India, AIR 1963 SC 1083
ii) Sree Raghuthilakathirtha Sreepadangalavaru Swamiji -vs- The State of Mysore & Ors., AIR 1966 SC 1172
iii) Empire Industries Ltd.-vs- Union of India & Ors., (1985) 3 SCC 314
iv) Goodricke Group Ltd. & Ors. -vs- State of W.B. & Ors., 1995 Supp (1) SCC 707.

17. The competing narration in the rival pleadings and the contentious arguments have received our due consideration. The principal assailment bearing on want of legislative competence of the State Legislature to enact the 1997 Act, if sustained, would be decisive vis- -vis the adjudicative pursuit and the same, therefore, demands priority in the order of scrutiny. In essence, the belegured legislation though has been impeached to be one ordaining taxation of petroleum and petroleum products as well as on income other than agricultural income as comprehended in Entry-53 and 82 of List-I of the 7th Schedule to the Constitution of India, the respondents in refutation have contended it to be an enactment within the purview of Entry 45 of List-II or in the alternative of Entry 49 thereof being either a levy in the form of land revenue or tax on land. The legislative entries sought to be taken refuge of by the parties form the bedrock of the analysis to follow and, therefore, are extracted hereinbelow:

List-I-Union List
53. Regulation and development of oil fields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerous inflammable.
& & & & & & & & & & & & & & & & & & & &..
82. Taxes on income other than agricultural income.

List-II-State List
& & & & & & & & & & & & & & & & & & & &..
45. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.
& & & & & & & & & & & & & & & & & & & &..
49. Taxes on lands and buildings. .

18. The scheme of the 1936 Act which stood amended by the 1997 Act, to disinter the true purport of the enactment is indispensable to determine the tenability or otherwise of the impugnment of its validity. There is no wrangle at the Bar that the 1936 Act had not been assailed earlier prior hereto. The 1936 Act as the title thereof would demonstrate is a legislation to regulate reassessment of land revenue in Assam. The preamble thereof underlines the expediency of a closer regulation of revision of assessment of land revenue in the State by a statute. Section 2(xi) defines town land as:-

a) any land included within the limits of any city constituted under the provisions of any law for the time being in force,
b) any land included within a Municipality or notified area defined in the Assam Municipal Act, 1956,

c) any other land which the State Government may declare as town land (under the Assam Land and Revenue Regulation, 1886) or in accordance with the provisions of Section 3 of the Act.

19. Section 2(xv) defines Industrial Lands to be those used for the purposes of manufacturing industrial products of various kinds as may be prescribed by the Rules. Section 2(xvi) clarifies that all words and expressions used in the Act and not defined therein would have the same meaning assigned to them respectively in the principal Act i.e. the Act, 1936 and the Assam Land and Revenue Regulation, 1886. Noticeably, Section 2(xv) and 2(xvi) had been incorporated vide the Assam Act No. IX of 1990 (for short, hereinafter referred to as 'the Act 1990').

20. Whereas Section 3 empowers the State Government to notify its intention to declare any specific area not already a town land to be so for the purposes of the Act by a notification, the mode of reassessment of land not being town land is detailed in Part-II thereof. As inserted by the Act, 1997 under challenge, Section 3-A authorizes the State Government, if it is of the opinion that a particular area has assumed importance for trade, commerce, industry or residential use, to declare the same as trade site, commercial site, industrial site or residential site, as the case may be, for the purpose of assessment of land revenue at the enhanced rates as may be applicable. This empowerment, as Section 3-A would unambiguously exhibit, is in absolute terms qua the other provisions in the enactment. Sections 8 and 9 deal with the proposal for reassessment of land revenue, the factors to be taken note of therefor and the rate of reassessed revenue thereof.

21. A plain reading of these two provisions would reveal that the determinants, amongst others, are the quality and potential of the land involved, value of the agricultural produce as the yields thereof and the economic condition of those dependent thereon. Section 11 though stipulates a ceiling on the demand and enhancement of land revenue, Section 11-A, all these notwithstanding, equips the State Government, if it is of the opinion that it is necessary to do so, to assess higher rate of revenue by a notification.

22. Part-III which applies to town land under settlement for reassessment thereof as well as the revenue payable contemplates division of such town land into following classes:-

(a) agricultural land (including agricultural residences),
(b) residential sites,
(c) trade sites,
(d) Industrial Sites,
(e) Commercial Sites.

Significantly, Industrial Sites and Commercial Sites have been incorporated by the 1997 Act and are thus comprehended to be town lands.

23. Section 16, 17 and 18 determine the rates of revenue for agricultural land, land classed as residential sites and trade sites respectively. The rates of revenue for the land settled with a right of removal and classed as trade sites, Commercial Sites and Industrial Sites (after the 1997 Act), in terms of Section 18 ought not to exceed 50% of the annual value of the sites. The utility and worth of such sites as the criteria to determine the rate of revenue for land is, thus, writ large on the face of Section 18. Section 21-B similarly authorises the State Government, notwithstanding anything contained otherwise in Part-III, if it is of the opinion that annual revenue of different classes of town land has increased, to notify any revision of rates as indicated therein. The residuary power of the State Government for revision of the rates of revenue contingent on its opinion for effecting revision of rates of revenue qua rural and town lands has thus unassailably been saved by the Act as evinced by Section 11-A

and 21-B thereof (Act, 1936).

24. Vide Section 25-A inserted by the Act, 1990 a land originally se ttled if used as industrial land is liable to be assessed at a higher rate of re venue as prescribed by the Rules. Section 25-B introduced by the 1997 Act being the centre figure of the debate deserves extraction as hereunder:

25-B.(1) Notwithstanding anything contained in section 18 or any other law for the time being in force the rate of revenue for land settled with a right of ren ewal and classed as 'Industrial Site' shall be assessed at 10% of net profit of the industry or industrial establishment subject to the condition that the minim um assessment per standard unit of one bigha of such Industrial Site shall not b e less than Rs. 1000/- in urban areas and Rs. 500/- in rural areas.

Explanation :- The net profit of an industry/ industrial establishment in an 'I ndustrial Site shall mean the average net profit earned as per its audited annu al balance sheet for consecutive three years immediately preceding such assessme nt. Where the industry/ industrial establishment has not completed a period of t hree years the audited balance sheet for its completed year(s) of existence shal l be taken into account to arrive at its net profit. Further, in case of small industry, where no such balance sheet is required to be prepared, the audited pr ofit and loss account of consecutive three years or such period immediately prec eding the assessment shall be taken into account for computation of its net prof it:

Provided that even if the balance sheet average or annual profit and, loss accou nt shown no net profit to such industry or industrial establishment, the minimum rate of revenue assessed shall be as prescribed under Section 25B(1).

(2) Till such assessment as prescribed under sub-section (1) above is made, reve nue assessment of Industrial Sites with a right of renewal shall be as per rules framed for the purpose.

(3) Where no Settlement Officer or Survey Officer is appointed and no officer is invested with the powers of a Settlement Officer or Survey Officer under Sectio n 138(1) of the Assam Land and Revenue Regulation, 1886 or where the terminal ye ar of the lease has not expired necessitating the appointment of a Settlement Of ficer, the Deputy Commissioner shall have all the powers of a Settlement Officer to classify all lands used as Industrial Site for the purpose of assessment of land revenue. .

25. A plain perusal of the text of this provision would evince the f ollowing salient features thereof:

a) Notwithstanding anything contained in Section 18 of the same enactment o r any other law for the time being in force, the rate of revenue of land settle d with a right of renewal and classed as 'Industrial Site' shall be assessed at 10% of the net profit of the industrial establishment.
b) However minimum assessment per standard unit of one Bigha of such indust rial site shall not be less than Rs. 1000/- in urban areas and Rs. 500/- in rura l areas.
c) The net profit of an industry/ industrial establishment in an Industrial Site shall mean the average net profit earned as per its audited annual balance sheet for consecutive three years immediately preceding the assessment.
d) Where an industry/ industrial establishment has not completed a period o f three years, the audited balance sheet for its completed year (s) of existence would be taken into account to arrive at its net profit.
e) In case of small industries where no such balance sheet is required to b e prepared, the audited profit and loss account of consecutive three years or su

ch period immediately preceding the assessment would be taken into account for c omputation of its net profit.
f) In case of no profit, the minimum rate of revenue shall be as prescribed above.

26. The Rules framed under the 1936 Act though in general terms prov ide for the modalities of revised assessment in the contingencies envisaged unde r the Act, those do not specify industrial products as referred to in Section 2(xv) defining Industrial Lands .

27. In the above framework of the Act, 1936, apart from the castigat ion of the assessment of land revenue based on net profit of the industry or ind ustrial establishment as ordained by Section 25B, the petitioners have, without prejudice thereto, have non-applicability of this provision even if valid in abs ence of a declaration mandated by Section 3-A of the enactment. Section 25-B for its application predicates classification of any land as industrial site contem plated in Section 3-A as a pre-requisite for assessment of land revenue qua the same at 10% of the net profit of the industry or industrial establishment in occ upation thereof being settled with it by the State Government under Section 18 o f the Assam Land and Revenue Regulation, 1886. Be that as it may, the plea of wa nt of legislative competence of the State Legislature to enact the Act, 1997 pre scribing assessment of revenue on the basis of profit needs to be attended to at the outset. As impugnments of identical nature in the context of similar taxing endeavours under various enactments have meanwhile engaged the attention of the Hon’ble Apex Court and this Court as is attested by the authorities cited at th e Bar, it would be apt at this stage to deal with the same for acquaintance with the enunciated legal proposition essential to answer the poser.

28. In Ajoy Kumar Mukherjee (supra) the constitutionality of annual tax levied under Section 62 of the Assam Local Self Government Act, 1953 was que stioned. The appellant, a land holder in the district of Kamrup in the State of Assam held a market on his land. The local Board of Barpeta within the jurisdict ion of which the market was held issued a notice to him to take out a licence an d pay Rs. 600/- for the year 1953-54 as licence fee for holding the market. This amount was later increased to Rs. 700/- for the year 1955-56. As the appellant’ s repeated protests against the levy fell in deaf years, he eventually assailed the constitutionality of the impost before the jurisdictional High Court contend ing inter alia lack of legislative competence of the State Legislature to tax ma rkets rendering the impost invalid. The State sought to repel the challenge by t aking resort to Entry-49 of List-II of the 7th Schedule to the Constitution of I ndia contending that the levy was valid as it was a tax on land.

29. Their Lordships, while reiterating the well settled principle th at the entries in the three legislative lists have to be interpreted in their wi dest amplitude held that for a tax to be one on land to come within the purview of Entry-49, it may be based on the annual value of the land and, thus, the pres cription therefor (annual value of land) would not be beyond the competence of t he State Legislature on the ground that it is an exaction on income. Referring t o the decision in Ralla Rama -vs- Province of East Punjab, AIR 1949 FC 81, it w as held that the use to which a land is put can be taken into account for imposi ng tax on it within the meaning of Entry 49 of List-II. It observed that the ann ual value of land could certainly be taken into account in imposing tax for the purpose of the said entry as such value would necessarily depend upon the use to which the land is put. Referring to Section 62 of the Assam Local Self Governme nt Act, 1953 empowering the local Board to prohibit use of any land under it as a market otherwise by a licence to be granted by it and subject to imposition of annual tax therefor, their Lordships concluded that the tax contemplated is of the land realizable only when the same is used for market. That the levy was not imposed on any transaction in the market was also noticed. On a detailed analys is of Section 62 as a whole, it was proclaimed that the provision predicated tha

t when any land was used for holding a market, the owner, occupier or farmer the reof was to pay certain tax for its use as such. It was clarified that the tax e nvisaged was relatable to the land for which a licence was to be issued for use thereof as a market and the impost was not relatable to the market as such. The impugnment was thus negated.

30. This pronouncement is an authority on the proposition that if a tax can reasonably be held to be one on land it would be enfolded within Entry 4 9 of List-II of the 7th Schedule to the Constitution of India and that to impose such a levy the use to which the land is put can be taken into account. That an nual value of such land derivable from the use thereof can be taken into account for imposing a tax within the meaning of Entry-49 of List-II was underlined as well.

31. The Apex Court in State of Mysore & Ors. -vs- M.L. Nagade and Ga dag & Ors., (supra) encountered a challenge to the constitutional validity of Ru le 71 of the Andhra Pradesh (Telangana Area) Land Revenue Rules, 1951 and Rule 8 1 of the Bombay Land Revenue Rules, as amended, demanding annulment of the conse quential Non Agricultural assessment founded thereon. These two provisions in sh ort provided for such assessment in the event of diversion of agricultural land to non-agricultural purpose and also prescribing the rates therefor. The primary ground of assailment was the perceived unguided and uncontrolled power conferre d by these provisions portraying excessive delegation of legislative function, t hus, rendering the same constitutionally invalid. Their Lordships while dealing with the repudiation of Rule 71 in the above context noticed Section 50 of the H yderabad Land Revenue Act (VIII of 1317 F) whereunder land revenue was to be ass essed on the basis of various modes of use of the land i.e. (a) agricultural use ; and (b) in addition to agricultural use any other use from which profit or adv antage was derived. It was concluded that land revenue was thus to be assessed a ccording to the use thereof and that non-agricultural assessment was permissible in case the use was for the purpose other than agricultural as well as on profi t or advantage derived therefrom. In the conspectus of the challenge laid i.e. u n-canalized power with the resultant arbitrary discretion to the authorities, th eir Lordships observed that the guidelines therefor need not necessarily be eng rafted in the main statutory provision and can be gleaned from the setting in wh ich the same was lodged, the purpose of the Act and the preamble outlining the o bjectives thereof. That a legislation or a statute is enacted to achieve some pu blic purpose and the policy of law and the objective sought to be achieved can f urnish reliable guidelines for the exercise of discretionary power was reaffirme d. The following observation of Prof. Wills in his Treaties-Constitutional Law, Page 587 was quoted with approval:

> If a statute declares a definite policy, there is a sufficiently definite stan dard for the rule against delegation of legislative power, and also for equality if the standard is reasonable. If no standard is set up, to avoid the violation of equality those exercising the power must act as though they were administeri ng a valid standard. .

On the aspect of alleged excessive delegation of legislative pow er, their Lordships recalled the observations of the Apex Court in Avindev Singh -vs- State of Punjab & Anr., [1979] 2 SCR 845 as follows:

> The Law-making is not a turnkey project ready-made in all detail and once this situation is grasped the dynamics of delegation easily follow. Thus we reach the second constitutional rule that the essentials of legislative functions shall n ot be delegated but the inessentials however numerous and significant they be, may well be made over to appropriate agencies. Of course, every delegate is subj ect to the authority and control of the principal and exercise of delegated powe r can always be directed, corrected or cancelled by the principal. Therefore, th e third principle that emerges is that even if there be delegation, parliamentar y control over delegated legislation should be a living continuity as a constitu tional necessity. Within these triple principles, Operation Delegation is at onc

e expedient, exigent and even essential if the legislative process is not to get stuck up or bogged down or come to a grinding halt with a few complicated bills . .

32. Their Lordships concluded that the legislature can delegate details to be worked out by the delegate and the details can be numerous and significant. Noticing that the basic purpose of the parent Act was to empower the State and its agencies to assess and levy land revenue, the power to compute and realize non-agricultural assessment or special assessment contingent on the nature of the use of the and the profit derived thereby was sustained. Their Lordships recalled the oft quoted passage from the above celebrated work of Prof. Wills to the effect that a State does not have to tax everything in order to tax something and that it is allowed to pick and choose districts, objects, persons, methods and even rates of taxation, if it does so reasonably. The view of the jurisdictional High Court sustaining the plea of excessive delegation of legislative power and un-regulated discretion of the authorities was disapproved with the observation that land revenue is a tax and the validity of the taxing statute has to be determined keeping in mind the fact that in the matter of taxation the Court allows wide area of picking and choosing and the slab system. The impugnment was rejected vis- -vis both the provisions on identical findings.
Two judicially acknowledged principles do emerge from this decision, firstly, land revenue is assessable on the use of the land concerned and, secondly, the same is a tax for the realization whereof the State enjoys a reasonable play in the joints to determine the modalities therefor including the rates thereof.

33. The validity of the levy of education cess and rural employment cess imposed by the West Bengal Taxation (Second Amendment) Act, 1989 was questioned in Goodricke Group Ltd. & Ors. (supra). For raising funds to provide primary education throughout the State and to provide rural employment the West Bengal Legislature enacted the West Bengal Primary Education Act, 1983 and the West Bengal Rural Employment & Production Act, 1976 and imposed the aforementioned cesses upon certain lands and buildings. Section 4(1) of the 1976 Act levied rural employment cess on all immovable properties on which road or public work was assessed and Section 4(2) prescribed different rates in respect of lands, coal mines and other mines on an annual basis. By the West Bengal Taxation Laws (Amendment) Act, 1981, the Tea Estates were segregated as a separate category and a different rate was prescribed therefor on the basis of dispatches from such Tea Estates of tea grown therein. Such levy was successfully assailed on the ground of lack of legislative competence on the part of the State Legislature as well as violation of Article 14 and 31 of the Constitution of India, these contentions having been upheld by the Hon’ble Apex Court in Buxa Dooars Tea Company Ltd. -vs- State of West Bengal, (1989) 3 SCC 211. Their Lordships held that levy on the dispatches bore no nexus with the Tea Estates and rejected the argument to the contrary that the mode of levy was merely a measure of the tax.
It was in this background that the West Bengal Taxation Laws (Second Amendment) Act, 1989 was enacted amending Section 4(2) of the parent legislation prescribing levy annually on a Tea Estate at the rate of 12 Paise for each kilogram of green tea leaves produced in such Estate and omitting Clause (aa) in lieu thereof vide sub-Section (2-A). In examining the query as to whether the impugned levy was upon land within the meaning of Entry 49 of List-II to the 7th Schedule to the Constitution of India, their Lordships held that sub-Section (2-A) classified a Tea Estate as a unit by itself for the purpose of levy of the cess and its rate. While acknowledging the wide discretion of the Legislature in the matters of taxation, their Lordships also referred to the rule of pith and substance to reinforce the oft quoted proposition that the entries in the three lists in the 7th Schedule to the Constitution of India are legislative heads and must be construed liberally so much so that any incidental trenching on the field reserved for the other law making entity is of no consequence unless the extent of encroachment renders the offending enactment to be a colourable piece of legislation.

34. Their Lordships recalled with approval the observation in Sir By ramjee Jeejeebhoy -vs- Province of Bombay, AIR 1940 Bom 65, that the mode of ass essment does not determine the character of a tax and that it is impossible to c onclude that employment of annual value as a measure of the main tax (in that ca se property tax was levied at the rate of 10% on the annual letting value of the land and the buildings involved) was any indication that it was one on income. Reliance was placed as well on the decision of the Apex Court in Ralla Ram (supr a) where tax was similarly levied on the basis of annual value of the buildings and lands. The observation of the Federal Court therein that annual value was no t necessarily the actual income but was only a standard by which income may be m easured and that merely because the Income Tax authorities had adopted annual va lue as a standard for determining the income, it did not follow that if the same standard was applied as a measure for any tax the levy would become a tax on in come, was reiterated. Reliance with approval was placed on the decision of the C onstitution Bench of the Hon'ble Apex Court in Ajoy Kumar Mukherjee (supra) as w ell as the observations in Kunnathat Thathunni Moppil Nair -vs- State of Kerala, AIR 1961 SC 552 to the effect that ordinarily a tax on land or land revenue is assessed on the actual or potential productivity thereof which did connote that the same has reference to income actually made or which could have been made wit h due diligence. The enunciation by the Constitution Bench of the Apex Court in Federation of Hotel & Restaurant Association -vs- Union of India, (1989) 3 SCC 6 34 reaffirming that the subject of tax is different from the measure of the levy and that the latter is not determinative of its essential character or the comp etence of the legislature was recorded with approval. It was concluded in the ab ove overwhelming legal conspectus that merely because a tax on land or building is imposed with reference to its income or yield, it did not cease to be one on land or building, the income or the yield thereof being merely a measure of the tax.

35. While commenting that there is no set pattern of levy of tax on land and buildings and that thus no standardization is feasible, their Lordships observed that the legislature was free to adopt such method of levy as it chose and so long as the character of the levy remained within the four corners of a particular legislative entry, no objection could be taken to the method adopted. The impugned cess calculated on the basis of the yield was held to be well with in the accepted mode of levy of tax on land. Their Lordships accepted that the Tea Estate had been classified as a separate category/ unit for the purposes of levy and the computation of the cess on the basis of quantum of production of th e Tea Estate could not be characterized as a tax on production for that reason. The observation of the Constitution Bench in Kunnathat Thathunni Moppil Nair -vs - State of Kerala (supra) to the effect that a tax on a land is assessed on the actual or potential productivity thereof was relied upon.

36. The quintessence of these authoritative pronouncements is the ju dicially acknowledged validity of levy on land or buildings computed with refere nce to its income or yield. It is more that apparent that only because income or yield is the measure of the impost, it does not cease to be a tax on land or bu ilding. The legislature to this effect is permitted reasonable latitude to adopt such method of levy, provided it has a perceptible and tangible nexus with the subject matter thereof. That a tax on land, as has been held by the Constitution Bench of the Hon'ble Apex Court in Kunnathat Thathunni Moppil Nair (supra), is assessable on the actual or potential productivity of the land signifying a perm issible co-relation thereof with the income actually made therefrom or capable o f being made with due diligence is thus a judicially proclaimed enunciation. Fur ther, that the measure of tax is not determinative of its essential character or of the competence of the legislature as enunciated by the Apex Court in Federat ion of Hotels & Restaurants Association (supra), in our view, is of decisive imp ort.

37. In State of W.B. -vs- Kesoram Industries Ltd. (supra) a Constitu

tion Bench of the Hon'ble Apex Court was in seisin of the impugnment of the validity of certain levies, amongst others, on coal, tea and mining minerals bearing lands imposed by legislations enacted by the State Legislature of West Bengal as well as of the other States. The challenge laid was inter alia on the ground that the State Legislature by the impugned enactments had intruded in the legislative field of the Parliament inasmuch as the power of the State Legislature under Entry-23 and 50 of List-II pertaining to the theme involved was subject to any central legislation occupying the field and that in the face of the Mines & Minerals (Development and Regulation) Act, 1957, it was denuded of such power. The Hon'ble Apex Court on a detailed survey of the decisions impacting on the issues before it, reiterated that the various entries in the three lists were not powers but fields of legislation and each entry must receive liberal construction. It was underlined that a tangible distinction did exist between the subjects of legislation and those of taxation. Their Lordships reaffirmed that the power to tax cannot be deduced from a general legislative entry as an ancillary power. It was held that the word land appearing in Entry 49 in List-II, as dwelt upon by the Apex Court in Anant Mills Co. Ltd. -vs- State of Gujarat, AIR 1975 SC 1234, ought not to be assigned a narrow meaning so as to confine it to the surface of the earth alone and was extendable to all stratas above or below. Their Lordships acknowledged that it was open for the Legislature to ignore the nature of the user of the land involved and tax it, but it was permissible as well for it to identify the land for its classification by its use. While underlining that it was open to the Legislature while contemplating to tax the land to classify it on the basis of its potential, growth and utility without transgressing the guarantee under Article 14 of the Constitution, their Lordships recalled the observations recorded in Kunnathat Thathunni Moopil Nair (supra) and in Ajoy Kumar Mukherjee (supra) referred to hereinabove. The Hon'ble Apex Court eventually summarized its conclusions in para 129, the exerpts whereof embodying the pristine and paramount principles governing the issue in hand are extracted hereinbelow:-

(1) In the scheme of the lists in the Seventh Schedule, there exists a clear distinction between the general subjects of legislation and heads of taxation. They are separately enumerated.

(2) Power of regulation and control is separate and distinct from the power of taxation and so are the two fields for purposes of legislation. Taxation may be capable of being comprised in the main subject of general legislative head by placing an extended construction, but that is not the rule for deciding the appropriate legislative field for taxation between List I and List II. As the fields of taxation are to be found clearly enumerated in Lists I and II, there can be no overlapping. There may be overlapping in fact but there would be no overlapping in law. The subject-matter of two taxes by reference to the two lists is different. Simply because the methodology or mechanism adopted for assessment and quantification is similar, the two taxes cannot be said to be overlapping. This is the distinction between the subject of a tax and the measure of a tax.

(3) The nature of tax levied is different from the measure of tax. While the subject of tax is clear and well defined, the amount of tax is capable of being measured in many ways for the purpose of quantification. Defining the subject of tax is a simple task; devising the measure of taxation is a far more complex exercise and therefore the legislature has to be given much more flexibility in the latter field. The mechanism and method chosen by the legislature for quantification of tax is not decisive of the nature of tax though it may constitute one relevant factor out of many for throwing light on determining the general character of the tax.

(4) .....

(5) The entries in List I and List II must be so construed as to avoid any conflict. If there is no conflict, an occasion for deriving assistance from non obstante clause subject to does not arise. If there is conflict, the correct approach is to find an answer to three questions step by step as under:

One - Is it still possible to effect reconciliation between two entries so as to avoid conflict and overlapping?
Two - In which entry the impugned legislation falls by finding out the pith and substance of the legislation?
and
Three - Having determined the field of legislation wherein the impugned legislation falls by applying the doctrine of pith and substance, can an incidental trenching upon another field of legislation be ignored?

(6) Land , the term as occurring in Entry 49 of List II, has a wide connotation. Land remains land though it may be subjected to different user. The nature of user of the land would not enable a piece of land being taken out of the meaning of land itself. Different uses to which the land is subjected or is capable of being subjected provide the basis for classifying land into different identifiable groups for the purpose of taxation. The nature of user of one piece of land would enable that piece of land being classified separately from another piece of land which is being subjected to another kind of user, though the two pieces of land are identically situated except for the difference in nature of user. The tax would remain a tax on land and would not become a tax on the nature of its user.

(7) To be a tax on land, the levy must have some direct and definite relationship with the land. So long as the tax is a tax on land by bearing such relationship with the land, it is open for the legislature for the purpose of levying tax to adopt any one of the well-known modes of determining the value of the land such as annual or capital value of the land or its productivity. The methodology adopted, having an indirect relationship with the land, would not alter the nature of the tax as being one on land.

38. The impugned enactment levying cess on coal bearing lands was held to be within the competence of the West Bengal State Legislature having regard to Entry 49 and 50 of List-II. In so far as levy of cess on tea is concerned, the view taken in Goodricke Group Ltd. & Ors. (supra) was upheld and the determination made in State of Orissa -vs- Mahanadi Coal Fields, 1995 Supp. (2) SCC 686 to the effect that such a levy amounted to tax on minerals and mineral rights beyond the competence of the State Legislature was overruled.

39. This Court in Oil India Limited & Ors. (supra) while analyzing an identical challenge to the Assam Taxation (On Specified Lands) (Amendment) Act, 2004 enfolding crude oil and natural gas bearing land within the definition of specified land and thus rendering it exigible under the provisions of the principal Act i.e. Assam Taxation (On Specified Lands) Act, 1990 on the ground of lack of legislative competence of the State Legislature did emphatically reject the same on an elaborate scrutiny of the decisions narrated hereinabove. Therein the State sought to thwart the assailment by contending that the tax levied was one on land and, hence, covered by Entry 49 of List-II of the 7th Schedule to the Constitution of India. According to the petitioners, the levy though sought to be passed on as a tax on land was in essence one on crude oil and natural gas which are species of petroleum and petroleum products. Relying heavily in particular on the determination made by the Constitution Bench of the Hon’ble Apex Court in State of W.B. -vs- Kesoram Industries Ltd. (supra), this Court upheld the classification of the coal, crude oil, natural gas bearing lands having regard to the nature of the use thereof as well as the measure of annual productivity to assess the levy.

40. The unassailable precedential propositions adumbrated hereinabove, thus, proclaim that not only there is a distinction between the subject of a legislation and that of taxation discernible from the legislative entries, the subject matter of two tax though may be different, the methodology of levy even if similar, the same per se would not necessarily ensue overlapping of two imposts. The measure of tax thus has been consistently held not to be an unimpeachable

index to determine the general character of the levy. Not only it has been emph asized that the legislative entries must be liberally construed so as to avoid c onflict that the expression land applied in Entry 49 of List-II has to be exte nded wide connotation even if subjected to different user so much so that two la nds even if differently used, the tax thereon would be one on it has also been s tressed upon. Their Lordships in no uncertain terms did proclaim that there coul d be no set pattern of levy of tax on land and buildings and having regard to th e complexities in the exercise involving varied situational exigencies, the legi slature is to be left free to adopt such method so long as the character of the demand remains within the four corners of the concerned legislative entry. Howev er, to be a tax on land the levy must have some direct and definite relationship with it, the nature of the user thereof being one of the permissible basis of a ssessment of tax within the meaning of Entry 49 of List-II. It has been held per missible for the Legislature to adopt any of the well known modes of determining the value of the land for levying tax, the annual or capital value or its produ ctivity being the acknowledged determinants therefor. It has been enunciated as well, that the methodology applied even if exhibits only an indirect correlation with the land, the same would not ipso facto alter the nature of the tax from b eing on the land.

41. It thus unequivocally transpires that land has been recognized a s a unit for levy and its capital or annual value or its productivity has been a cknowledged to be a valid basis of assessment. Tax on land or land revenue, it f ollows as a corollary, is assessable on actual or potential productivity of the land sought to be taxed. As has been held in categorical terms in Kunnathat That hunni Moopil Nair (supra), tax on land has reference to the income actually made therefrom or possible to be made with due diligence and such a levy does not ce ase to be a tax on land. The income from the land or the yield thereof, thus, is an allowable measure of tax which if resorted to would retain the character of the impost to be one on land as comprehended in Entry 49 of List-II.

42. Viewed in the perspective of these judicially propounded enuncia tions, the impugnment of the validity of Section 25-B of the Act 1936, as amende d vide the Act 1997, in the comprehension of this Court, does not merit acceptan ce. The land revenue as envisaged by this provision is predicated to be at 10% of the net profit of the industry or the industrial establishment concerned, the minimum thereof being not less than Rs. 1000/- in urban areas and Rs. 500/- in rural areas construing per standard unit of 1 Bigha. Whereas the assessment in t he minimum, as the provision would manifest, is patently measured on the unit of 1 Bigha of the industrial site, the levy in excess thereof in general terms is computable on the net profit of the industry or the industrial establishment at the percentage referred to therein. Viewed as a whole, both the measures of asse ssment of land revenue are relatable to the value and utility of the land declar ed as an industrial site. As adverted to hereinabove, the assessment for levy vi s- -vis land not being town land, as Part II of the Act 1936, as amended, would reveal is to be based, inter alia on the inherent potential and agricultural pro duce. Under Part III of the said enactment applicable to town land encompassing residential, trade, industrial and commercial sites, the rates of revenue are vi sibly relatable to the annual revenue thereof. That the revenue assessable is le gislatively intended to be founded on the value of the land construed to be the unit therefor is, thus, obvious from the scheme of the Act 1936, as amended. The rates of revenue are commensurate to the quality of the land and the utility po tential thereof. The basis of assessment of land revenue under this enactment as a corollary demonstrates perceptible nexus with the state and efficacy of the l and rendering, in our estimate, the impost to be a tax on land as conceived of i n Entry 49 of List II of the 7th Schedule to the Constitution of India. That the annual revenue/ capital value of the land and the productivity thereof are the permissible norms for assessment of land revenue in terms of an enactment compre hended within the purview of Entry 49 of List II as has been judicially proclaim ed reinforces this conclusion of ours.

43. The criticism of Section 25-B as a yield of a legislative exercise bereft of constitutional endowment signifying tax on income, thus, does not commend for acceptance. The land involved being available to the petitioners at their disposal to cater to their activities, the extent of actual use thereof cannot be a decisive determinant to assay the validity of Section 25-B. The discretion exercised by the petitioners in electing the purpose for utilizing such land, in our comprehension, cannot be a factor to test the validity of the measure of revenue prescribed by this provision. The plea of discrimination based on the degree and the nature of the use of the land of petitioners, thus, cannot be sustained. The challenge to the constitutional validity of Section 25-B, therefore, fails.

44. Admittedly, as on date no declaration under Section 3A proclaiming the land (s) at the disposal of the petitioners as industrial site(s) has been made. The respondents' endeavour to repel this requirement is traceable to Section 25-A read with Section 2(xv) defining industrial land . They contend that as the petitioners had been utilizing their land(s) for the purpose of manufacturing industrial products, they are using the same as an industrial land, thus obviating the need for any further declaration under Section 3A. According to the petitioners, they are engaged in the exploration, extraction and production of crude oil and natural gas in/ from the lands in their occupation. They have categorically denied to be engaged in any manufacturing activity. Though the respondents have asserted that they (petitioners) indeed carry out manufacturing activities of industrial products on the land and that the process of production amounts to manufacture, the pleadings are vividly jejune to conclusively arrive at an unassailable finding on this contentiously disputed question of fact. Though in course of the arguments reference was made on behalf the respondents to texts downloaded from the websites of the petitioners, the same have not been laid with us. There is, thus, no unimpeachable proof on record for the present that the petitioners had been undertaking manufacturing activities of industrial products on the lands at their disposal. The omission on their part to challenge the validity of Section 25-A as inserted by the Assam Act No. IX of 1990, as alleged by the respondents, therefore, does not clinch the issue in their (respondents) favour presently under scrutiny.

45. Noticeably, by the 1997 Act not only Section 3-A and 25B were incorporated in the Act 1936, Sections 15 and 18 were also amended. Sect